

OFFICE OF THE ATTORNEY GENERAL

95-00231

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MAY 31 1995

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Honorable John C. Eagerton, IV
Director, Alabama Department of Aeronautics
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Suite 544
Montgomery, Alabama 36130

Department of Aeronautics -
Airports and Aircraft -
Municipalities - Licenses
and Permits - Lakes

The State Department of
Aeronautics may not issue a
license to individuals to
operate a private seaplane
on Lake Tuscaloosa when the
city owns the lake, and a
city ordinance prohibits
such operations and
activities on Lake
Tuscaloosa.

Dear Dr. Eagerton:

This opinion is issued in response to your request
for an opinion from the Attorney General.

QUESTIONS

1. Whether the Aeronautics Department acted properly in 1987 when it granted a license to operate a private seaplane on Lake Tuscaloosa.
2. Whether under the statutory law governing the Aeronautics Department, the Aeronautics Department is obligated to grant a license to an

individual to operate a personal seaplane on a public body of water that is within the jurisdiction and regulatory control of a municipality.

3. Whether the Aeronautics Department can rely on a municipal ordinance as grounds for refusing to issue any other license that may be requested by individuals desiring to operate a seaplane on Lake Tuscaloosa.

FACTS AND ANALYSIS

On October 9, 1987, the Department of Aeronautics issued an airport license to an individual for a private seaplane base on Lake Tuscaloosa. Lake Tuscaloosa is owned by and within the corporate jurisdiction of the City of Tuscaloosa, which did not have any agreement with the individual licensee to establish and/or operate a seaplane base on Lake Tuscaloosa. In fact, it appears the Department of Aeronautics' license was objected to by the city. The individual in question no longer owns or operates a seaplane on the city lake, but another individual is now operating a floatplane on the lake. The City of Tuscaloosa has a city ordinance which prohibits the landing of seaplanes on Lake Tuscaloosa, which is a proper exercise of its police powers under §11-45-1, Code of Alabama 1975.

As to your first question concerning the Department of Aeronautics' actions in 1987, the issue is moot. Pursuant to §36-15-20, Code of Alabama 1975, this office will not review prior agency decisions. The opinion sought must be necessary to the present performance of the agency's official duties.

Section 4-4-3, Code of Alabama 1975, gives to municipalities the power and authority to regulate landing fields in and upon public parks or other property owned by the municipality. In fact, Title 4, Chapter 4 of the Code of Alabama 1975 grants to municipalities the authority to designate and regulate both public and private airports on property owned and/or acquired by the municipality. While the statutory law governing the Aeronautics Department authorizes the State to approve sites for airports and restricted landing areas, to license airports, restricted landing areas and other air navigation

facilities (§4-2-72, Code of Alabama 1975) and to acquire property for the above-listed facilities "it may not, however acquire or take over any airport, restricted landing area or other air navigation facility owned or controlled by a municipality . . . without consent of such municipality." Section 4-2-90, Code of Alabama 1975.

It appears, therefore, that the authority to authorize and/or permit seaplane operations on Lake Tuscaloosa rests with the City of Tuscaloosa. The property belongs to the City of Tuscaloosa. If the property had belonged to an individual the Aeronautics Department would have had pre-approval on the site selected for a restricted landing area under §4-2-73 thru -74, Code of Alabama 1975, but the Department of Aeronautics does not exercise authority over landing operations on Lake Tuscaloosa which is owned by the city and not owned by the person or entity seeking to establish aviation operation at that site.

The purpose of the Aeronautics Department under §4-2-2, Code of Alabama 1975, is regulating and promoting safe use of aircraft in this state and, although the Department can acquire property for aviation operations, they have not done so at this site. Therefore, under the statutory law governing the Aeronautics Department, the Department should not grant a license to an individual to operate a personal seaplane on Lake Tuscaloosa which is owned and regulated by the City of Tuscaloosa under the city's police powers. Furthermore, the City of Tuscaloosa's municipal ordinance which prohibits seaplane activity on Lake Tuscaloosa should be respected by the Aeronautics Department which has no authority over city property that has not been designated as an airport-restricted landing area or other air navigation facility by the City of Tuscaloosa.

CONCLUSION

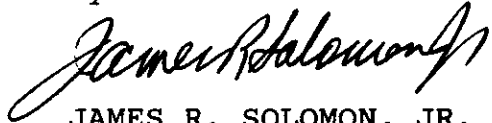
In conclusion, the Aeronautics Department is not authorized to grant a license to an individual to operate a personal seaplane on Lake Tuscaloosa which is owned by the City of Tuscaloosa and can rely on the municipal ordinance as grounds for refusing to issue any license that may be requested by individuals desiring to operate a seaplane on Lake Tuscaloosa.

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I hope this sufficiently answers your questions. If our office can be of further assistance, please contact Cecil Brendle of my staff.

Sincerely yours,

JEFF SESSIONS
Attorney General
By:

A handwritten signature in cursive script, appearing to read "James R. Solomon, Jr.", written in dark ink.

JAMES R. SOLOMON, JR.
Chief, Opinions Division

JS/CB/cr

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